IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 657 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAGUBHAI CHHIKABHAI PATEL

Versus

CHHANABHAI BABERBHAI TAVARIA

Appearance:

1. First Appeal No. 657 of 1984
MR DD VYAS with Mr.D.B. MEHTA for Petitioner No. 1
NOTICE SERVED for Respondent No. 1
MR MD PANDYA for Respondent No. 2

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 23/01/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. This appeal under Section 110 (D) of the Motor Vehicles Act is directed against the award dated 1-8-1983 rendered in M.A.C. Petition No. 110 of 1982 by the M.A.C. Tribunal,Valsad, at Navsari, dismissing the claim petition of the claimant, holding the claimant to be the solely negligent in the occurrence of the accident.

2. Shortly stated the case of the claimant is that on 15-11-1981 at about 12-30 p.m. the claimant was going on a Luna Moped bearing registration No. GRD-1750 near Kaliyawadi octroi naka from GEB office to Navsari; that the claimant was going on left hand side of the road and when he came near Kaliaywadi octroi naka a passenger bus bearing registration no: GRT-7723 came at an excessive speed from the opposite direction and dashed against his luna moped; with the result he was thrown on the road with the motor cycle and sustained serious injuries on his head and he became unconscious on the spot; that the said motor cycle was of the ownership of the company where claimant was serving; that in the accident heavy damage was caused to the luna moped; that the claimant sustained fracture injury on his head; that soon after the accident he was first taken to Civil Hospital, Navsari, where preliminary treatment was given; the claimant was then taken to Bombay Hospital, at Bombay for further and better treatment; that he was kept in the hospital for seven days as indoor patient and thereafter he was admitted as indoor patient in K.G. General Hospital at Navsari where he remained for 17 days; that he is still not fully recovered and he still experiences pain in the head; that because of the accident his memory has also weakened and has sustained permanent disability. The claimant claimed compensation of Rs.1,50,000/- under different heads. Claimant adduced oral evidence. The driver of the said bus is also examined on oath. Documentary evidence comprised copies of medical papers, copy of panchnama pertaining to place of occurrence (exh.48), copy of judgment of Criminal Court (exh.56), copy of F.I.R. (exh.47). The Claims Tribunal appreciating oral as well as documentary evidence especially panchnama exhibit-48 concluded that the accident in question is the result of sole negligence on the part of the claimant and dismissed the claim petition. It is this award dismissing claim petition which is assailed in the present appeal.

3. It is submitted by Mr. D.B. Mehta, learned

advocate for the appellant/claimant that the claimant was driving luna which is a light vehicle. That the driver of the respondent bus was driving heavy vehicle, namely passenger bus, and as the driver of the heavy vehicle, he should have exercised greater degree of care and caution. The accident is the result of the negligence on the part of respondent no.1 - driver of the passenger bus.

4. We have perused record & proceedings requisitioned from the trial court, especially oral as well as documentary evidence. It is not disputed that the luna bearing registration No. GRD-1750 and the passenger bus bearing No. GRT-7723 of the respondent Corporation collided and the driver of luna, i.e. claimant sustained injuries. The claim petition by the impugned award has been dismissed holding the claimant who was riding luna No. GRD-1750 solely negligent in the occurrence of accident. We have considered the evidence of the claimant as well as the driver of the passenger bus in question.

It has been stated by the claimant in his deposition exhibit-57 that the accident took place before 1 1/2 years of the recording of his deposition at about 12.00 O' clock in the noon near Kaliyawadi; that he was riding luna - a two-wheeler at a slow speed and going toward Navsari, at that time one passenger bus came from the opposite direction driven at an excessive speed; said bus gave dash to the luna and claimant became unconscious and fell down. In the cross-examination it has been deposed that, at the time of accident witness did not have driving license with him; when he first saw the bus it was at a distance of about 3 to 4 ft.; at the place of accident the road is straight, there was considerable traffic on the road at that time. It is denied that witness have less experience of riding luna; that he had taken learning licence for riding scooter five years before, thereafter he did not obtain pucca/regular licence; on seeing the passenger bus he tried to take luna on side; when he first saw the bus the same was in middle of road; that he was riding luna at a speed of 10 k.m. per hour but the bus was at an excessive speed; that the front portion of the bus collide with luna of the claimant.

5. Exhibit-61 is the deposition of Chhanabhai Baberbhai, driver of the passenger bus in question. It has been deposed by him that since last two years he has been working as driver and he has driving licence for seven seven to eight years. On the date of accident he was going from Bharadiya to Vapi and he was driving

passenger bus near Kaliyawadi octroi naka at a slow speed. At that time one luna driven at an excessive speed came from opposite direction and steering was also not under control moving hear and there. Seeing this he stopped the bus on left hand side of the road, thereafter luna came and dashed with the front right mudguard of the bus. It is denied that the passenger bus was driving at an excessive speed and in a negligent manner. In the cross examination it has been stated that on the road at the time of accident there was traffic of cyclists going on both the sides; that at the place of accident road is narrow; that when he first saw luna same was at a distance of 50 ft and at that place road was straight; that he applied brakes and after covering the distance of 4 to 5 ft. the bus stopped.

6. It will be seen from the oral evidence of claimant as well as driver that at the time of accident there was traffic on the road and the road was straight. According to the driver, on seeing the luna driven in an uncontrolled manner, he applied brakes to the bus which covered the distance of about 4 to 5 ft and there after bus stopped on left hand side of the road, and luna coming from opposite direction came and dashed with right front mudguard of the bus. Nothing has been suggested from the cross examination of the driver of the bus so as to suggest negligence on his part as the bus had stopped before the accident occurred. The panchnama pertaining to the place of accident is at exhibit-48. Perusal of the same suggests that the said road was a tar road east-west. ST bus bearing No. GRT-7723 was facing east-west on the left hand side of the road and near the front right wheel of the said bus, luna bearing No: GRD-1750 was lying facing east. The width of the road is 18 ft. north-south. It is also suggested that below right side head-light there was one dent on bumper of the ST bus No. GRD-7723; that the distance from front right wheel of the bus and southern edge of the road is 13 ft., and from edge of the road the rear right wheel of the bus is at a distance of 13 ft and both the left side wheels of the bus were on the edge of the road on the northern side. It was also found that luna bearing No. GRD-1750 was near right hand side front wheel of the bus lying nearer with head-light broken and the steering bent and damaged with a dent on the mudguard. Brake marks suggesting application of brakes was found at a distance of 8.8 ft. from rear wheel of the bus.

7. As seen above, it is suggested that the bus was on its left hand side of the road, i.e. correct side of the road. Brakes were also applied leaving break marks

covering a distance of 8.8 ft. Luna was found damaged with breaking of glass of the front light and dent on the right mudguard of the bus and luna lying near right front wheel of the bus. The distance suggested from the panchnama indicates that luna was very much on the wrong side of the road, since it came on other side of the road and dashed with right mudguard of the bus and the luna lying near right front wheel of the bus. The bus was supposed to be on the left hand side of the road and as per panchnama it was on left hand side of the road. The claimant who was coming from opposite direction was required to be on the southern side of the road which would be his left hand side of the road, and the correct side of the road, since he was going on western direction. It need be hardly said that in a broad day light when two vehicles are coming from opposite direction, particularly when the road is straight, both the vehicles are supposed to have seen the vehicle coming from opposite direction. The driver of the bus on seeing luna coming from opposite direction took the bus to his left hand side of the road and stopped at the edge of the road, and it is the claimant who was coming from opposite direction leaving his correct side of the road came on the wrong side and dashed with the bus. According to the version of the bus driver, on seeing the luna coming from opposite direction he applied brakes as the road was narrow at the relevant place, thereafter the bus stopped travelling distance of 8.8 ft. which was on the edge of the left hand side of the road, which was correct side of the passenger bus. Seeing the bus coming from opposite direction claimant should not have gone to the other side of the road and had he been on his left hand side of the road, which was the correct side for him, the accident would not have taken place. It was absolutely within the control of the claimant to avoid accident had he remained on his correct side of the road and not coming to the otherside of the road where the bus had stopped. Considering the panchnama, we are of the opinion that, the driver of the passenger bus could not have averted the accident since he not only applied brakes to slow down vehicle but had stopped the passenger bus and thereafter the claimant came riding his luna and dashed with right mudguard of the bus with his luna and fell down on right side of the passenger bus. Considering the distance given in the panchnama, namely 13 ft from the right front wheel of the bus of the other end of the road,luna was on the wrong side of the road. He had no business to come on the side of the road where passenger bus was standing and claimant could have very well passed on the other side of the road namely 13 ft. width which was open for him to cross the bus and avoided the

accident. It cannot be said that the claimant had no option but to come on the other side of the road, namely on the part of the road on which bus was standing as other half of the road was quite open for him to go, and the luna would hardly require 3 to 4 ft width to cross the passenger bus.

8. Thus having regard to the oral evidence, namely deposition of claimant as well as the driver of the passenger bus and the panchnama (exh.48), we are of the view that the Claims Tribunal is perfectly justified in arriving at a conclusion that the accident is the result of sole negligence on the part of the claimant driver of luna, and had he been cautious he could have avoided the accident; whereas driver of bus namely opponent No.1 could not have done more than what he had, namely stopping his bus, keeping the bus on extreme left hand side of the road which was correct side of the road for him.

9. In our opinion, the findings arrived at by the Claims Tribunal does not call for any interference as the same is perfectly legal, justified and consistent with the evidence on record. In view of the above, the appeal being devoid of merits is liable to be dismissed.

10. In the result appeal fails.

Dt: 23-1-2003 (N.G. Nandi, J)

(D.A. Mehta, J)

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